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ABSTRACT

The great progress of recent years towards school integration has not been uniform: pockets of resistance remain and the issues involved in school desegregation continue to arouse public controversy and confusion. Sixteen years after the Supreme Court (in Brown vs Topeka) had ruled that school segregation compelled or sanctioned by law unconstitutional, there is still no widespread understanding of the nature and scope of the issues. The Civil Rights Commission believes that public understanding of the issues involved in school desegregation is essential if they are to be resolved satisfactorily. Many of these issues are legal in nature and require careful analysis of relevant court decisions. Other issues involve practical questions concerning the quality of education afforded to the Nation's children. Still others relate to fundamental human and moral questions of national conscience. The Commission speaks out in the hope that it can shed light on the issues and, by so doing, contribute to their successful resolution. The issue of school desegregation, like other issues of national concern, has roots deep in history; to understand fully the present situation and to form a sound basis for determining courses of action for the future, what that history has been must first be understood. (Authors/JM)

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Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

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UNDERSTANDING SCHOOL DESEGREGATION

The 1970 school year has begun with great hope for sustained progress in school desegregation. Many Southern school districts which for more than a decade resisted the constitutional command of desegregation have integrated their schools and, despite fears of disruption and chaos, have made the transition successfully. The situation today is in sharp contrast to that which prevailed 10 years ago. The concept of "massive resistance", which then threatened a constitutional crisis, is a thing of the past; the cry of "segregation forever", which then was commonplace, now is infrequently heard; and hundreds of thousands of school children who then would have had little expectation of attending desegregated schools are now doing so.

Nonetheless, progress has not been uniform, pockets of resistance remain, and the issues involved in school desegregation continue to arouse public controversy and confusion. Sixteen years after the Supreme Court of the United States ruled that school segregation compelled or sanctioned by law was unconstitutional, there still is no widespread understanding of the nature and scope of the issues, and public discussion has been more heated than enlightening.

Terms such as "busing" and "neighborhood school" have been used as slogans, tending to cloud understanding rather than stimulate analysis. Technical legal terms such as "dual" and "unitary" school systems have been freely bandied about, but few have paused to define their meaning. Other legal terms, such as *de jure* and *de facto* segregation, also have been inadequately defined and their use has contributed little to foster rational discussion or heighten understanding of the issues they represent.

The Commission believes that public understanding of the issues involved in school desegregation is essential if they are to be resolved satisfactorily. Many of these issues are legal in nature and require careful analysis of relevant court decisions. Other issues involve practical questions concerning the quality of education afforded to the Nation's children. Still others relate to fundamental human and moral questions of national conscience. As the President pointed out last May, the issue of school desegregation "presents us a test of our capacity to live together in one nation, in brotherhood and understanding."

The Commission speaks out in the hope that it can shed light on the issues and, by so doing, contribute to their successful resolution. The issue of school desegregation, like other issues of national concern, has roots deep in our history. To understand fully where we are now and to form a sound basis for determining

courses of action for the future, we first must understand what that history has been.

The Brown Case and the Rule of "Separate but Equal"

The 1954 Supreme Court decision in *Brown* v. *Board of Education of Topeka* is the landmark case from which modern developments in the law of school desegregation flow. For more than 50 years before that decision, public school systems were constitutionally permitted to operate under laws which provided for racially separate school systems so long as those systems also were equal.

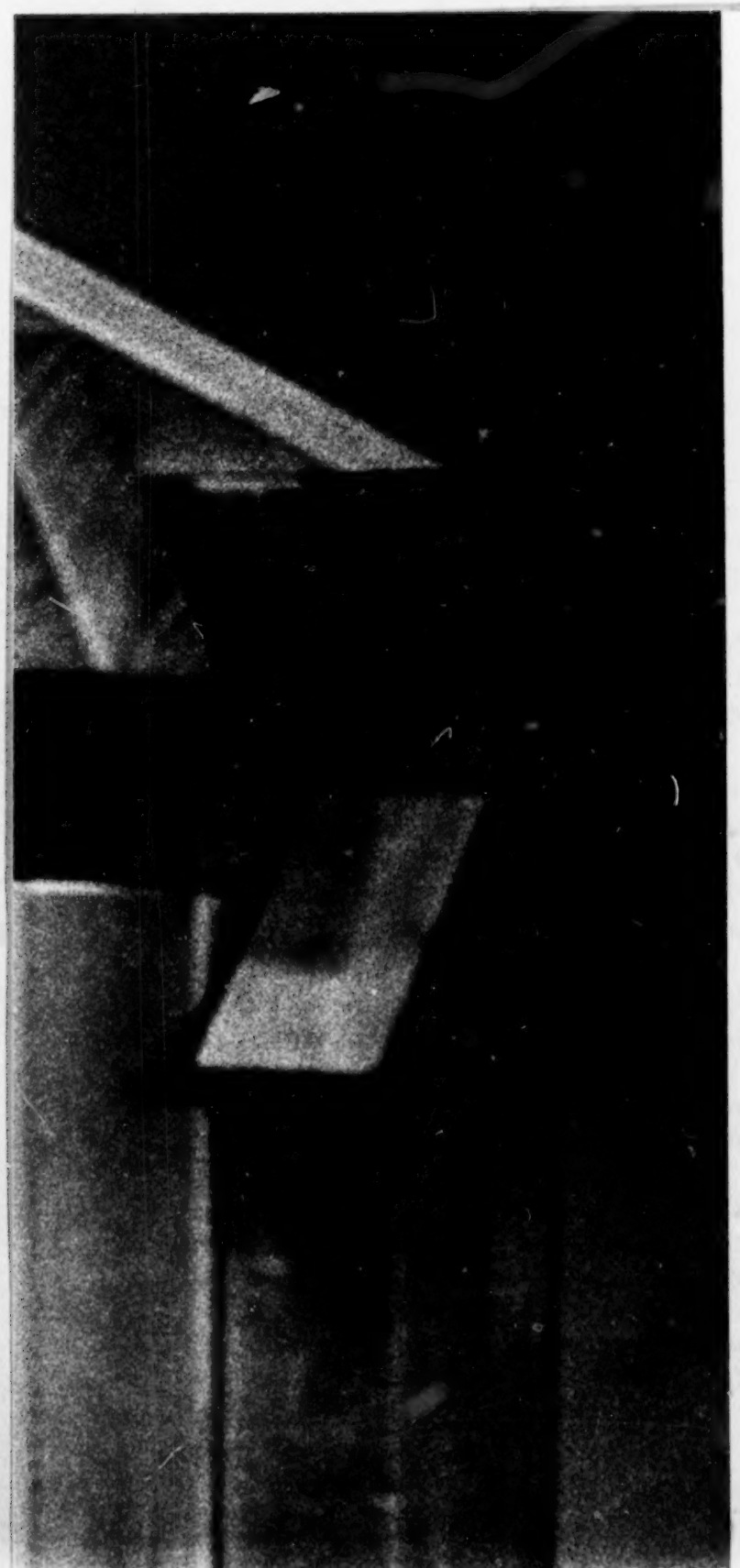
In the South, this doctrine typically had resulted in the enactment of laws requiring or officially sanctioning racially separate, or "dual" school systems. Thus, regardless of factors such as the proximity of the school to a child's home, children were assigned to school on the basis of their race. Busing frequently was required and black and white children alike were bused as far as 50 miles or more each day to assure perfect racial segregation.

In the North and West as well, some States had enacted and maintained school segregation laws. In most of these States, however, school segregation had not been imposed through specific State or local legislation. But from whatever causes, by 1954 school segregation outside the South was a serious and growing problem.

During the 15 years preceding the *Brown* decision, the Supreme Court had occasion to re-examine the operation of the rule of "separate but equal" and questioned whether racially separate education could, in fact, be truly equal. Thus in 1938 the Supreme Court held that for the State of Missouri to provide a law school for whites while merely extending financial aid to black students for legal education in neighboring, nonsegregated States was not sufficient to satisfy the rule.

Twelve years later, the Court held that for the State of Texas to bar a black applicant from the University of Texas Law School deprived him of the equal protection of the laws even though Texas had, at considerable expense, provided a separate law school for black students within the State. In these cases, what appeared to be good, separate facilities were provided for black students but, nevertheless, the Court found they were not "equal" to the educational benefits afforded white students. In none of these cases, however, did the Court expressly repudiate the doctrine of "separate but equal". Rather, by inquiring closely into whether separate educational facilities were, in fact, equal, it exposed that doctrine to the light of reality and laid the foundation for the ultimate question of whether any segregated arrangement could meet the test of constitutionality.

The *Brown* case expressly challenged the rule of "separate but equal. It raised the question whether the 14th amendment, which prohibits State or local governments from denying to any person "equal protection of the laws", could be satisfied



in the field of public education when black students were compelled, under State or local law, to be educated separately from whites. The Court answered "no" and, at least as a matter of constitutional law, sounded the death knell of segregated education. The Court said:

. . . in the field of public education the doctrine of 'separate but equal' has no place.

Although the Supreme Court, in the *Brown* case, was specifically concerned only with school segregation resulting from the enactment of laws or other legal requirements—*de jure* segregation—the Court also spoke more generally on the subject. "Separate educational facilities," the Court said, "are inherently unequal." The Court also pointed out:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law. . . .

Thus the Court expressly recognized the inherent inequality of all segregation, whether or not legally sanctioned, noting only that the sanction of law gave it greater impact.

Progress in School Desegregation Since Brown

The Supreme Court in the *Brown* case did not order immediate school desegregation. Rather it ordered that desegregation be accomplished "with all deliberate speed". There has been a good deal of

discussion, from the vantage point of hindsight, over the wisdom of the Court's order. Many claim that if the Court had ordered immediate desegregation, the Nation would have been spared much of the pain and suffering caused through what amounted to judicial sanction of delay. Others claim that the pain and suffering would have been even greater and that the Court showed wise restraint in permitting the necessary period of adjustment to the new condition of desegregated education.

Whatever the relative merits of these opposed arguments, the fact is that progress in school desegregation in the South during the decade following the *Brown* decision was frustratingly slow—only 3 percent desegregation during the decade ending in 1964. Enforcement was left to the courts, while Congress and the executive branch remained largely silent.

With the enactment of Title VI of the Civil Rights Act of 1964, Congress and the executive branch both became active participants in the effort to bring about school desegregation. Under Title VI, school districts which refused to desegregate were subject not only to judicial decrees, but also to a cut-off of Federal education funds. Progress accelerated enormously—30 to 40 percent desegregation in the 5 years between 1964 and 1969. Thus congressional and executive support for the Court's ruling resulted in a tenfold increase in Southern school desegregation in only 5 years.

In the North and West, however, the problem has grown more severe. Increasingly, black and white children attend school in isolation from one another and despite a number of court cases holding such segregation in violation of the Constitution, school systems in these parts of the country have not yet felt the full impact of the *Brown* decision.

Legal Developments Since the Brown Case

While the *Brown* decision established the clear principle that legally compelled school segregation was unconstitutional, many questions were left unanswered. For example, if the racially separate—"dual"—school systems that existed in the South had to be dismantled and replaced by "unitary" systems, what, in fact, constitutes a "unitary" system?

Further, if the Constitution requires that school systems be desegregated, does this mean that the schools must, in fact, be racially integrated? That is, to what extent does desegregation differ from integration as a constitutional matter?

In school districts which maintained "dual" school systems, what means must be used to establish a "unitary" system?

To what extent does the Constitution require the result of desegregation as opposed to good faith efforts to achieve it?

Finally, while the Supreme Court in *Brown* was concerned with racially segregated school systems resulting from the enactment of laws requiring or expressly sanctioning them [*de jure* segregation] what of school segregation resulting from factors other than State or local laws?

What if school segregation results from

administrative decisions of school officials such as the location of school boundary lines, selection of sites for new schools, and the size of particular schools, made with the purpose and effect of maintaining racial separation, but in the absence of any law requiring it?

What if school segregation results not from administrative decisions of school officials, but from residential segregation for which other State or local government bodies, such as local public housing authorities, urban renewal agencies, zoning boards, and city councils, are responsible? Do these forms of school segregation also violate the constitutional requirement of "equal protection of the laws"?

And what of school segregation that results from fortuitous factors, such as population shifts and other demographic changes, in which government officials have played no part? Does this form of school segregation [*de facto* segregation] violate the Constitution?

These are questions which the Supreme Court necessarily left unanswered in the *Brown* decision. Although some of them still have not been definitively resolved in the 16 years since *Brown*, many have been, and criteria for the resolution of others have been suggested in opinions of the Supreme Court and of lower Federal courts.

Thus the Supreme Court has defined a "unitary" system as one in which "there are no Negro schools and no white schools—just schools." What this means is that the constitutional obligation of school districts which, by law, maintained racially separate "dual" school systems is to establish a single system in which schools are no longer racially identifiable, whether through faculty, student body, or otherwise. What this also means is that there is little legal basis for the sharp distinction that some still draw between desegregation and integration. A school system cannot be considered desegregated unless the schools, in fact, are integrated. As one court put it: "The law imposes an absolute duty . . . to integrate in the sense that a disproportionate concentration of Negroes in certain schools cannot be ignored."

The courts have not declared that a single desegregation technique is universally applicable to all school systems. Rather, judicial determinations of what is a constitutionally acceptable desegregation plan have been made through an examination of the facts on a case-by-case basis. Thus courts have rejected desegregation plans based entirely on geographic attendance zones where it was found that school boards had imposed geographic zoning on existing patterns of residential segregation with the inevitable result of continued school segregation. One court has held that attendance zones that lead to black and white schools are presumptively unconstitutional. As the court put it: "The school board may not build its exclusionary attendance areas upon private residential discrimination."

In short, constitutionally acceptable means are those that achieve the result of

desegregation in the particular school district. In those cases where relatively simple techniques accomplish desegregation, they have been approved by the courts. Thus in some cases, simple adjustments to school attendance areas are sufficient. In others, white and black schools are paired, with all children in particular grades assigned to one school and those in the remaining grades assigned to the other school. Where transportation is the most effective means of achieving this, it has been required.

The courts necessarily have had to rely heavily on the good faith efforts of local school boards to devise the means necessary to eliminate dual school systems. The courts, however, have not relied on good faith efforts *alone* as the measure of constitutional compliance. As the Supreme Court has said:

The burden on a school board today is to come forth with a plan that promises realistically to work, and promises realistically to work now.

Finally, although the courts have been primarily concerned over the years with the problem of overcoming school segregation as typically found in the South, where it resulted from the enactment of laws expressly requiring or sanctioning it, they also have addressed themselves to other forms of school segregation, as typically found in the North and West, where such laws are infrequent. In these parts of the country, school segregation may appear to result from factors outside the control of government—*de facto* segregation. In a number of cases, however, the courts have found upon examination, that Federal, State, and local governments in a variety of forms—especially in effecting segregated housing patterns—have been responsible for the existing school segregation. In such cases, despite the absence of laws expressly requiring or sanctioning it, the courts have found that school segregation is not *de facto*, but *de jure*, and, therefore, in violation of the Constitution.

In fact, it is doubtful that there are many cases in which school segregation actually has resulted solely from accidental factors in which government is not involved. As this Commission concluded in its school desegregation statement of April 12, 1970: "There is probably little legal substance to the concept of *de facto* school segregation." In those few cases in which school segregation has, in fact, resulted from fortuitous factors such as demographic changes, the courts differ, but the weight of existing judicial decisions is that the Constitution imposes no duty on school officials to correct the situation. No such case, however, has yet been decided by the Supreme Court, the final arbiter on questions of constitutional law.

The Supreme Court of the United States is currently considering some of these legal questions. The Court's decision in the cases before it undoubtedly will further define the constitutional requirements regarding school desegregation. It is important to recognize, however, that the

questions we have discussed and those before the Court involve only narrow legal requirements. Judicial decisions on these questions represent only the minimum mandates imposed upon school districts and tell us only what school districts *must* do. The issues, however, are of critical national importance and can be resolved, not by reference to minimum obligations imposed by the courts, but by recourse to the full constitutional powers of all branches of government at all levels.

Last May, the President defined the issue of school desegregation this way:

Few issues facing us as a nation are of such transcendent importance: important because of the vital role that our public schools play in the nation's life and in its future; because the welfare of our children is at stake; because our national conscience is at stake; and because it presents us a test of our capacity to live together in one nation, in brotherhood and understanding.

In short, the issues involve fundamental questions of the quality of education our children will receive and the kind of society they will inherit.

Integration and Quality Education

In 1954, the Supreme Court of the United States stated the basic truth that "Separate educational facilities are inherently unequal." The Court's statement was one of legal principle, but its truth already had been demonstrated in fact by the unhappy experience during the many decades in which the rule of "separate but equal" supposedly prevailed. What had been demonstrated, and continues to be demonstrated, is that educational separation, in fact, means educational inequality. As measured by all objective criteria, black children, segregated from the white majority, are afforded unequal educational opportunity. They are educated in schools where facilities and curricula are inadequate and by teachers who, themselves, often are products of the separate and unequal system in which they teach. In addition, the stigmatizing effect upon black children of segregated education is an equally formidable factor contributing to the denial of equal educational opportunity. Less is required of black students in black schools because, traditionally, less has been expected of them.

The effect on white children, while not as susceptible to objective measure, also is damaging. The system of school segregation presents them with a distorted view of society which ill-equips them to enter the world of reality—a multiracial and multicultural world. For many of our white youth the persistence of school segregation has generated cynicism and a loss of faith in the Nation's will and capacity to live up to its avowed principles. They see moral emptiness and hypocrisy and are rejecting many of America's traditional values and traditional institutions, which they believe are responsible for these failures. Some observers contend that segregated schools are more damaging to white children than to black. As Dr. Kenneth B.

Clark recently put it:

Segregated schools are stultifying and destroying the ethical and personal effectiveness of American white children more insidiously than they are destroying the personal and human effectiveness of America's black children—who, at least, understand what is done to them and many, therefore, can continue the struggle against this type of dehumanization.

If segregated education necessarily is unequal, to what extent can equality be achieved through integrated education? Here, social science research increasingly suggests that racial integration is a key not only to equality of educational opportunity, but also to equal educational achievement. The Coleman Report in 1966, this Commission's 1967 Report on "Racial Isolation in the Public Schools", and a 1970 study of the New York State Board of Regents, all have indicated that racial integration has a positive effect on the achievement and aspirations of school children.

Quality education, however, cannot be measured solely by reference to test scores. The school is a unique institution in our society. As the President pointed out earlier this year:

It is a place not only of learning but also of living—where a child's friendships center, where he learns to measure himself against others, to share, to compete, to cooperate—and it is the one institution above all others with which the parent shares his child.

In short, the school is the most important public institution bearing on the child's development as an informed, educated person and as a human being. It is essential that our children—black, brown, red, yellow, and white—receive the kind of training in integrated school environments that will equip them to thrive in the multiracial society they will enter. Integrated education also is of critical importance if we are to heal the dangerous divisions in our society and if America is to achieve its promise—one Nation indivisible.

Can Integrated Education Work?

There are many who recognize the value of integrated education but who despair of achieving it because of the practical difficulties involved. They view the school segregation problems of some of our giant urban centers such as Chicago, New York, and Los Angeles, and conclude that desegregation simply cannot work. The fact is, however, that in a larger national context, it has worked. Many communities throughout the country—North and South—White Plains, New York, Raeford and Chapel Hill, North Carolina, Berkeley, California, New Albany, Mississippi, have determined to end school segregation and have ended it. As measured by such objective criteria as achievement scores, school attendance, and student participation in school affairs, it has been accomplished successfully. Some of these communities are in areas commonly thought to be among the most opposed to desegregation.

Their experience can be duplicated in hundreds of other communities. Even in the Nation's relatively few giant urban centers the problem, though more difficult, is not impossible.

Busing and the Neighborhood School

Two emotionally charged issues have intruded into the public debate over school desegregation and have tended to cloud understanding rather than clarify discussion. These are "busing" and the "neighborhood school". Those who have used them as arguments against desegregation ignore certain plain facts. One is that every day of every school year 18 million pupils—40 percent of the Nation's public school children—are bused to and from school, and the buses log in the aggregate more than 2 billion miles each year. Another is that the trend of modern-day educational thought is away from the neighborhood school—a self-contained unit serving a relatively small student population—in favor of larger school units where economies of scale frequently make possible a broader curriculum, provision of new educational equipment, and special services not financially possible in schools which serve small numbers of students.

To discuss desegregation in terms of "busing" and "neighborhood schools" is to remove the issue from the legal and educational context to which it belongs and transfer it to the arena of emotion and politics. Neither busing nor the organizational structure of school systems is an end unto itself. Rather, each is a means to

the end of desegregated, quality education. As this Commission pointed out last April:

. . . the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important.

The techniques necessary to accomplish desegregation are at hand. What is needed is the will to bring these techniques to bear on the problem and the financial resources necessary to make most effective use of them. The proposed Emergency School Aid Act of 1970 would represent a significant step in providing the necessary financial resources to assist in accomplishing desegregation. Under this legislation, funds could be made available not only for school districts under court order to desegregate, but also for school districts that voluntarily wish to do so but lack the necessary financial means this entails.

Funds, alone, are not enough. It also is necessary to generate the will to achieve desegregation. This requires the commitment and leadership of public and private officials at all levels. It is not a matter that we can leave entirely to the courts. All branches of government must participate as equal partners through full use of constitutional powers. As the President said: "Our national conscience is at stake," and it is that, above all, that we cannot afford to compromise at this point in our national history.

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